



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Fitzgerald & Company, Inc.--Request for  
Reconsideration

File: B-223594.2

Date: November 3, 1986

## DIGEST

Prior decision, holding that a bid bond which refers to another solicitation number is materially defective and requires rejection of the bid as nonresponsive, in the absence of other objective evidence on the face of the bond clearly establishing that the bond was intended to cover the bid with which it was actually submitted, is affirmed. In general, the correct bid date on the bond, by itself, is not sufficient to overcome the presence on the bond of the solicitation number for a different on-going procurement.

## DECISION

Fitzgerald & Company, Inc. (Fitzgerald) requests reconsideration of our prior decision in Kinetic Builders, Inc., B-223594, Sept. 24, 1986, 86-2 C.P.D. ¶ \_\_\_\_\_. In that decision, sustaining a protest against the proposed award of a contract to Fitzgerald, we held that Fitzgerald's bid bond accompanying its bid under invitation for bids No. F08620-86-B0019 (IFB-0019), issued by the Department of the Air Force, was materially defective because the bond erroneously referenced invitation for bids No. F08620-86-B0051 (IFB-0051), a different on-going procurement. Although the bond identified a bid date of June 24, 1986, the date scheduled for the opening of bids under IFB-0019 (the scheduled opening date for IFB-0051 was July 17), we found no other objective evidence on the face of the bond to establish convincingly that the bond was intended to cover IFB-0019 and not IFB-0051. Essentially, we concluded that a correct bid date on a bond, by itself, is not sufficient to overcome the presence of an erroneous solicitation number. In light of the governing principle that reasonable uncertainty as to the enforceability of a required bid bond against the surety renders the bond unacceptable, we recommended to the Air Force that Fitzgerald's bid be rejected as nonresponsive and that award be made to the protester, the remaining low, responsive bidder. The Air Force then implemented our recommendation.

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Fitzgerald now requests reconsideration of our prior decision, and, concomitantly, protests the resulting award, on the ground that we factually and legally erred in concluding that the erroneous solicitation number on the bond rendered it materially defective. However, we find nothing in the firm's present request which would cause us to reverse or modify our September 24 decision. See Department of Labor--Reconsideration, B-214564.2, Jan. 3, 1985, 85-1 C.P.D. ¶ 13.

Contrary to Fitzgerald's assertion, we correctly found as a matter of fact that the bond contained no other indicia apart from the referenced June 24 bid date to identify it with IFB-0019. As noted in our prior decision, the bond typically identified the work to be performed as "Construction," a general term which embraced the efforts under both IFB-0019 and IFB-0051. Moreover, the bond's penal sum was stated in general percentage terms--"20%"--which was the amount required by both solicitations. We, therefore, see no error in our conclusion that the bond lacked other indicia apart from the June 24 bid date sufficient to show that it was intended to cover IFB-0019 rather than IFB-0051.

In this regard, Fitzgerald has proffered no legal authority in support of its asserted position that an incorrect solicitation number on a bond is only a minor omission or inaccuracy which does not affect the enforceability of the bond. Rather, Fitzgerald attempts to analogize the situation to earlier decisions of this Office which have held that a bid bond which contains the wrong bid date, but which is nonetheless identifiable with the only invitation outstanding for a particular procurement, is only technically defective and can be enforced against the surety. See, e.g., 39 Comp. Gen. 60 (1959), as cited in our September 24 decision.

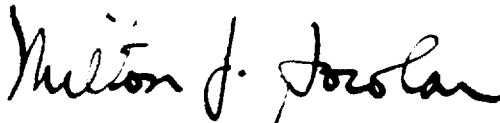
Fitzgerald's analogy, however, misses the essential distinction that must be drawn between the materiality of incorrect bid dates and incorrect solicitation numbers on bid bonds. That is, if an incorrect bid date on a bond is held to be only a minor defect, our continuing view, then a correct bid date alone cannot overcome the presence of an incorrect solicitation number since there must be at least one element of the bond which is material as to the identification of the solicitation the bond is actually intended to cover. We believe that material element, in the absence of convincing evidence on the face of the bond to the contrary, must be the solicitation number. Because suretyship law strongly suggests that a bond will be strictly construed in favor of the surety, and that liability will not be found

by construction or implication, see 74 Am. Jur. 2d Suretyship § 26 (1972), we see no legal error in our conclusion that, given the existence of IFB-0051 as an on-going procurement, sufficient reasonable doubt existed as to the enforceability of Fitzgerald's submitted bid bond to render it unacceptable.

We recognize that Fitzgerald was the low bidder under IFB-0019. However, the fact that the government might derive an economic benefit through an award to the firm does not permit that award to be made. It is well settled that the importance of preserving the integrity of the competitive bidding system outweighs the possibility that the government might realize monetary savings if a material deficiency in a bid is corrected or waived. See Abar Ipsen Industries, B-219499.2, Jan. 3, 1986, 86-1 C.P.D. ¶ 7.

We also do not accept Fitzgerald's argument that our decision elevates a matter of form over substance. To the contrary, our decision advises the contracting community that the solicitation number referenced in a bid bond is a material element of that bond directly affecting its acceptability, and, accordingly, serves to caution that careless preparation of bid bonds may result in the rejection of otherwise proper bids. Thus, to the extent Fitzgerald continues to argue that the insertion of "B-0051" instead of "B-0019" on the bond was only a typographical error, we remain of the view that this error was not merely an inadvertent transposition of two digits, see Custodial Guidance Systems, Inc., B-192750, Nov. 21, 1978, 78-2 C.P.D. ¶ 355, but instead represented a negligent preparation of the bond which created uncertainty at the time of bid opening as to the enforceability of the bond against the surety.

Our prior decision is affirmed.

*for*   
Comptroller General  
of the United States